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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,213	03/30/2004	Nicolas Deloge	OSTEONICS 3,0-455	4051
530 7590 09/03/2008 LERNER, DAVID, LITTENBERG,			EXAMINER	
KRUMHOLZ	& MENTLIK		COMSTOCK, DAVID C	
WESTFIELD,	VENUE WEST NJ 07090		ART UNIT	PAPER NUMBER
			3733	
			MAIL DATE	DELIVERY MODE
			09/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/813,213	DELOGE ET AL.	
Examiner	Art Unit	
DAVID COMSTOCK	3733	

-The MAILING DATE of this communication appears on the cover sheet with the correspondence address THE REPLY FILED 04 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.  1. ☑ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of 1 application, applicant must timely file one of the following replies; (1) an amendment, affidavit, or other evidence, which places t application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Reque for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a) ☑ The period for reply expires 3_months from the mailing date of the final rejection.  b) ☐ The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  Examiner Note: If box is checked, check either box (6) or (6). ONLY CHECK BOX (6) WHEN THE FIRST REPLY WAS FILED WITHIN T MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fet have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been filed in the date for micro (1) the expiration date of the shortened statutory period for reply originally set in final Office action; or (2) set forth in (6) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely file may reduce any earner patent time adjustment. See 57 CFR 7.1001.  NOTICE OF APPEAL  □ The Notice of Appeal was filed on	. In TWO e leed, of
<ul> <li>1. No reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other dence, which places to application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Reque for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</li> <li>a) The period for reply expires 3_months from the mailing date of the final rejection.</li> <li>b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later, no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</li> <li>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE RIFERT FEW VAS FILLED WITHIN T MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</li> <li>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fet have been filled is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been filled is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been filled in the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been filled as the date for purposes of elementary feels of the feels of the filled provides any examed placed from: (1) the expiration date of the shortered abstraty period for reply originally set in final Office action; or (2) the expiration and the corresponding amount of the fee. The appropriate ext</li></ul>	. In TWO e leed, of
application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places t application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 1.13; or (3) a Reque for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:  a) ☐ The period for reply expires or. (1) the mailing date of the final rejection, or (2) the date set forth in the final rejection, whichever is later, no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection, or event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: If box 1 is checked, check either box (s) or (b). OHLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN T MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension for have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication for the fee. The appropriate extension for the replication fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of the fee. The appropriate extension for the replication of	. In TWO e leed, of
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no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  Examiner Note: If box 1.5 checked, check either box (o) or 10, ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN T MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).  Extensions of time may be obtained under 37 CRF 1.138(a). The date on which the petition under 37 CRF 1.138(a) and the appropriate extension fet have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been filed is the date form; (1) the expiration date of the shortened statutory period for reply originally set infinal Office action; or (2) set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely file may reduce any earned patent term adjustment. See 37 CRF 1.70(E).  NOTICE OF APPEAL.  2 ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date in fling the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  3 ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE bellow);  (b) ☐ They raise new issues that would require further consideration and/or search (see NOTE bellow);  (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: (See 37 CFR 1.116 and 41.33(a)).	rwo e 'ee ) as ed,
MONTHS OF THE FINAL REJECTION. See MPEP 766.07(f).  Extensions of time may be obtained under 37 CFR 1.136(a) and the appropriate extension fet have been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet have been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fet under 37 CFR 1.17(a) is calculated from: (1) the experiation date of the shortened statutory period for reply originally set in the final Office action; or (2) set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely file may reduce any earner plant the ran adjustment. See 37 CFR 7.040.)  **NOTICE OF APPEAL**  2. □ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date filing the Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  **MENDMENTS**  3. □ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) □ They raise new issues that would require further consideration and/or search (see NOTE below);  (b) □ They raise new issues that would require further consideration and/or search (see NOTE below);  (c) □ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) □ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: □ (See 37 CFR 1.116 and 41.33(a)).  4. □ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. □ Applicant's re	e 'ee ) as ed,
have been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension in under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set infinal Office action; or (2) set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely flic may reduce any earned patent term adjustment. See 37 CFR 1.70(a)b.  NOTICE OF APPEAL  3. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date fliing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Sint Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  AMENDMENTS  3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) may reply must be filed within the time period set forth in 37 CFR 41.37(a).  (b) They raise new issues that would require further consideration and/or search (see NOTE bellow);  (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  (d) They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: (See 37 CFR 1.116 and 41.33(a)).  4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  5. Applicant's reply has overcome the following rejection(s): (See 31 CFR 1.124).  7. For purposes of appeal, they proposed amendment(s): a) Mill not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:	ee ) as ed, of
2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date- filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Sin Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).  **MENDMENTS**  3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise new issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  NOTE: (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): could be allowable if submitted in a separate, timely filed amendment canceling to non-allowable claim(s).  7. ☑ For purposes of appeal, the proposed amendment(s): a) ☑ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows: Claim(s) allowed:	
filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Sint Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).    MENDMENTS	
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(d)	
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<ul> <li>5. ☐ Applicant's reply has overcome the following rejection(s):         <ul> <li>6. ☐ Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment cancelling it non-allowable claim(s).</li> </ul> </li> <li>7. ☑ For purposes of appeal, the proposed amendment(s): a) ☑ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.         <ul> <li>The status of the claim(s) is (or will be) as follows:</li> <li>Claim(s) allowed:</li> </ul> </li> </ul>	
<ol> <li>Newly proposed or amended claim(s) would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</li> <li>Mero proposes of appeal, the proposed amendment(s): a) Mero will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed:</li></ol>	
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how the new or amended claims would be rejected is provided below or appended.  The status of the claim(s) is (or will be) as follows:  Claim(s) allowed:  ———————————————————————————————————	
Claim(s) allowed:	
Claim(s) objected to:	
Claim(s) rejected: 1-4 and 6-20. Claim(s) withdrawn from consideration:	
AFFIDAVIT OR OTHER EVIDENCE	
8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary ar was not earlier presented. See 37 CFR 1.116(e).	nd
9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).	а
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER	
National Control of the Control	
12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).	
13. Other:	
/Eduardo C. Robert/ /David Comstock/ Supervisory Patent Examiner, Art Unit 3733 Examiner, Art Unit 3733	

U.S. Patent and Trademark Office PTOL-303 (Rev. 08-06)

Continuation of 11. does NOT place the application in condition for allowance because: The applied art satisfies the claimed invention. The limitation that the guide be formed by a slit through the first portion, and so forth, amounts to a product by process claim. Since the art shows a guide, and the claims are directed to the device and not the method of making the device, the manner in which the device is formed is not material.